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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/649,399	08/28/2000	John F. Travers	44123/14	7200

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EXAMINER
NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
3634	9

DATE MAILED: 01/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

JM

Office Action Summary	Application No. 09/649,399	Applicant(s) TRAVERS ET AL.	
	Examiner Jennifer E. Novosad	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 December 2001* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) *5-8 and 16* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,9-15 and 17-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☒ The proposed drawing correction filed on *31 December 2001* is: a)☒ approved b)☐ disapproved by the Examiner

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Drawings

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on December 31, 2001 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims **13**-15 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation "too small" in lines 10-11 of claim 13, renders the claim indefinite since the term "too" is a relative phrase.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

As previously indicated, claims **1**-4 and 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Krause '957.

Krause '957 discloses a combination plastic dish rack and plastic tray assembly comprising a dish drainer (24, 12, and 20, between 16 and 64 - see left quarter portion of Figure 2) having an interior and a base (12); a tray (22, 26, 15, 14, 30, 13, and 28, between 62 and 16 - see right three quarter portions of Figure 2) having a footprint, i.e., 13, 14, and 15, larger than the base (12) of the drainer when the tray is in a first deployed configuration (Figure 2) and the tray being compactable so as to fit entirely in the interior of the drainer (see Figure 1) when in a second storage configuration; the tray further comprising a plurality of live hinges (16, 17, and 18) about which the tray is folded so as to convert the assembly between the deployed and storage configurations; the assembly further comprising a silverware compartment (68) that is readily detachable from or attachable to the tray by first (90 and 91) locking components defining pegs disposed on the tray which engage second (92 and 93) locking components defining holes disposed in the compartment (68) and the silverware compartment (68) fitting entirely within the interior of the drainer when the tray is in the storage configuration.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

As previously indicated, claims **1**-4 are rejected under 35 U.S.C. 102(e) as being anticipated by Patadia *et al.* '676.

Patadia *et al.* '676 disclose a dish drainer assembly comprising a dish drainer (56 and 19 - see right third portion of Figure 1) having an interior and a base (19); a tray (55, 17, 18 - see right two third portions of Figure 1) having a footprint, i.e., 17 and 18, larger than the base (19) of the drainer when the tray is in a first deployed configuration (Figure 1) and the tray being compactable so as to fit entirely in the interior of the drainer (see Figure 8) when in a second

storage configuration; the tray further comprising a plurality of live hinges (31-34) about which the tray is folded so as to convert the assembly between the deployed and storage configurations.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims **13**-15, 17 *(as previously indicated)*; 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krause '957, alone.

Krause '957 discloses the assembly as advanced above.

The claims differ form Krause '957 in requiring a package (claims 13 and 18), defining a plastic film (claim 19) sized to contain the drainer and tray when the tray is in the storage configuration.

Although Krause '957 does not disclose a package which contains the drainer and tray, it would have been an obvious engineering design choice to one of ordinary skill in the art at the time the invention was made to have provided a package to contain the assembly when the tray is in the storage configuration, thereby decreasing shipping and storage space, allowing for ease in economy and manufacture and ease to the consumer.

Response to Arguments

Applicants' arguments filed December 31, 2001 have been fully considered but they are not persuasive.

With respect to applicants' arguments (see first full paragraph on page 6) that both Krause and Patedia *et al.* show devices that are "unitary", i.e., not separate components, it is noted that the claims, as written do not recite that the dish drainer and tray set are "separate components". Accordingly, these arguments are considered to be more limiting than what is actually claimed and therefore are commensurate with the scope of the claims. *Finally*, as advanced above by the specific reference to numerals in the applied references, it is clearly seen that the trays of both Krause and Patedia *et al.* fit within the drainer irregardless of whether the drainer and trays are unitary.

Applicants' statements in the first full paragraph on page 7 are noted. However, these statements fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

In response to applicant's argument (see the second full paragraph on page 7) that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-305-3597 for regular communications and (703)-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1113.

Daniel P Stodola

Jennifer E. Novosad/jen
January 27, 2002

DANIEL P. STODOLA
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